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| HAMILTON & TERRILE, LLP P.O. BOX 203518 AUSTIN, TX 78720 | | | AVELLINO, JOSEPH E | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/928,771

Applicant(s)

BUCKMAN ET AL.

Examiner

Joseph E. Avellino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 25-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-32 are pending in this examination. The Office acknowledges the election of Group I (claims 1-24) with traverse. Therefore claims 1-24 will be examined. Claims 25-32 are hereby withdrawn as being drawn to a nonelected invention.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 19-24 are rejected under 35 U.S.C. 101 because they are not tangibly embodied. These claims recite a software architecture, which is merely just software code, which is not tangible. See MPEP 2106.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 10-13, 17, 18, 19, 21, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Shwed et al. (USPN 5,835,726) (hereinafter Shwed).

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4. Referring to claim 1, Shwed discloses a programmable packet based network having plural nodes for providing services to network subscribers, the network comprising:

a service creation tool (i.e. a GUI) having an operator interface for programming a service definition package (i.e. rule base), the service definition package having one or more packet processing behaviors (i.e. rules) defined in a network programming language (i.e. the graphical language used by the user) (Figure 3, all; col. 6, line 39 to col. 8, line 10);

a service control center (i.e. system administrator 102) interfaced with the packet based network (i.e. connected) and operable to accept the service definition package for deployment to the predetermined network nodes (i.e. workstations or gateways at which protection is desired) (col. 6, lines 10-50); and

at least one network node (i.e. gateways or workstations) interfaced with the network the node having a network processor (an inherent feature if connected to the network), the node operable to perform the one or more packet processing behaviors translated from the network programming language (i.e. perform the function that is desired) (col. 6, lines 40-45).

5. Referring to claim 2, Shwed discloses plural network nodes (i.e. plural gateways) forming an ISP intranet, the packet processing behaviors establishing tunnels between the network nodes (i.e. forming VPNs between the gateways) (e.g. abstract).

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6. Referring to claim 3, Shwed discloses the service creation tool comprises a GUI for defining services in the network programming language (col. 6, lines 35-50).

7. Referring to claim 4, Shwed discloses a network processor abstraction layer associated with each network processor, the abstraction layer operable to translate the network programming language for execution on the associated network processor (i.e. the system administrator 102 is able to compile the network language into a language which is compatible with each network processor, i.e. gateway or workstation) (col. 6, lines 40-50; col. 8, lines 10-40).

8. Referring to claim 5, Shwed discloses the service control center (i.e. system administrator 102) comprises a software architecture for programming a network to provide a service (i.e. a VPN), the architecture having a service layer (i.e. GUI, providing a service to the user), an execution layer (i.e. compiler, executing the code generated by the user), and an infrastructure layer (i.e. the hardware executing the software 212) (col. 5, lines 55-67; col. 6, lines 40-50).

9. Referring to claim 7, Shwed discloses the service layer comprises a dataflow program and the execution layer comprises a dataflow processor (i.e. a GUI program which defines as to how the data will flow through the network, and the processor which compiles the rules to be executed) (col. 6, lines 40-50).

10. Claim 10 is rejected for similar reasons as stated above. Furthermore it is inherent that the service object is instantiated on the network node, otherwise the code segment cannot be executed.

11. Referring to claim 11, Shwed discloses subscribing a network end user customer to the service through the service control center (i.e. installing the rule base on the end user workstation inherently subscribes the user to the service of the VPN) (col. 6, lines 10-30).

12. Referring to claim 12, Shwed disclose providing customer parameters from the service control center to the network node; the customer parameters represented as instance variables of customer instances (i.e. the name of the workstations related to the filter) (Figure 3/2; col. 6, line 60 to col. 7, line 32).

13. Claims 13, 17, 18, 19, 21, and 24 are rejected for similar reasons as stated above. Furthermore Shwed discloses the service layer having instructions that identify packet processing behaviors for execution by predetermined execution elements of a network node (Figure 6, ref. 604), the execution environment layer representing the network node execution elements to execute instructions from the service layer (Figure 6, ref. 608), and an infrastructure layer providing management functions to support the network node execution elements (Figure 9, ref. 912; col. 10, lines 40-60) and Shwed further discloses a reporting element the execution environment comprising a

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procedural abstraction of the reporting element (i.e. the control module 210 is able to generate user interface information for the data stored in the logs) (col. 6, lines 45-55).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 6, 8, 9, and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shwed.

16. Referring to claim 6, Shwed discloses the invention substantively as described in claim 5. Shwed does not specifically disclose the service is a rule based service

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comprising an expert system, however it is well known that packet sniffers and network monitors can contain expert systems. By this rationale "Official Notice" is taken that both the concept and advantages of providing for a rule based expert system to provide a service is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Shwed to include a rule based expert system in order to provide a network system which can self correct itself in order to defend an attack which it was not previously coded for, thereby providing a more robust system as well as allowing for future upgrades and replacements.

17. Referring to claim 8, Shwed discloses the invention substantively as described in claim 7. Shwed does not specifically disclose an FPGA specification and the execution environment layer includes an FPGA compiler, rather just that the information is compiled in order to allow the gateways to execute the rule base. However it is well known that most routers include FPGA chips and firmware can be uploaded in order to update the security policies. By this rationale, "Official Notice" is taken that both the concept and advantages of providing for an FPGA specification and an FPGA compiler in the execution layer of Shwed is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Shwed to include an FPGO compiler in order to allow the rule base to be executed by a router running an FPGA chip, resulting in increased customer base as well as a more compatible software product, resulting in a greater customer base and increased sales.

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18. Referring to claim 9, Shwed discloses the invention substantively as described in claim 7. Shwed further discloses having a network processor compiler (i.e. packet filter generator 208) (col. 6, lines 40-60). Shwed does not specifically state that the service further comprises a network processor pattern tree, however this is a well known feature of any compiler to convert the program language into a machine readable language. By this rationale, "Official Notice" is taken that both the concept and advantages of providing for a processor pattern tree in a compiler is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Shwed to include a processor pattern tree in order to efficiently and quickly compile the security rules generated by the GUI into the machine language required for the packet filter in the network, thus resulting in optimized code for the machine.

19. Referring to claims 14-16, Shwed discloses the invention substantively as described in claim 13. Shwed does not specifically disclose using a drag and drop for parameters, plural tabs in a window which comprise a shape tab, a classify tab, a modify tab, and a queue tab, however all of these are design changes which are well known in the art (i.e. drag-and-drop, and a plurality of tabs) and these tabs can be named anything, specifically as to what they do. By this rationale, "Official Notice" is taken that both the concept and advantages of providing for using a drag and drop for parameters, plural tabs in a window which comprise a shape tab, a classify tab, a modify tab, and a queue tab is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Shwed to incorporate

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using a drag and drop for parameters, plural tabs in a window which comprise a shape tab, a classify tab, a modify tab, and a queue tab in order to make the GUI more pleasing to the user, and creating an effective GUI which will facilitate the user in making the correct security enhancements to the network.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

21. Applicant employs broad language, which includes the use of word, and phrases, which have broad meanings in the art. As the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly and as reasonably possible, in determining patentability of the disclosed invention. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993). Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response, and reiterates the need for the Applicant to more clearly and distinctly, define the claimed invention.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JEA
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DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100